

Mr. KAGEN. Thank you, Congressman YARMUTH. I really appreciate your words of wisdom and your counsel. And I would like to engage you in some conversation this evening.

Earlier this evening we heard our colleagues on the Republican side raise some interesting issues, and one of the questions that someone raised was, almost facetiously, I hope, "Where's Waldo?" If security, if international security depends upon finding anybody, it's not Waldo. We took our eye off the ball. Where is Osama bin Laden, and what are we doing about him and his violent extremists and the people that follow his way of thinking?

So, may I ask you a question? Congressman YARMUTH, is it really true that our intelligence community went dark? Are we no longer listening in on conversations? Is some of this fear mongering actually real? Is there any truth in there at all? Are we going dark? Are we not listening to people who want to do us harm?

Mr. YARMUTH. Well, I think the answer to anyone who thinks about it is obvious. No, of course we are listening. And what's more, we're listening pursuant to authority that exists in the law. And when the current law expired recently, the authority to surveil under the prior act did not expire. And, in fact, there have been numerous people who have said we have all the authority we need to protect this country.

Mr. KAGEN. But, sir, there have been telephone calls going out. There have been radio conversations. There have been television commercials in districts around America trying to indicate that, in fact, we have gone dark, that we've suddenly stopped listening. Are you telling me here tonight that that just isn't true?

Mr. YARMUTH. You don't have to take my word for it. Experts in the field have testified to the fact that this is not the case. Richard Clarke, who is the former Chief NSC Counterterrorism Adviser under both Presidents Clinton and George W. Bush said, "Let me be clear. Our ability to track and monitor terrorists overseas would not cease should the Protect America Act expire. If this were true, the President would not threaten to terminate any temporary extension with his veto pen. All surveillance currently occurring would continue even after legislative provisions lapsed because authorizations issued under the act are under effect up to a full year."

So, of course, there is no reason to believe the ads and the scare tactics that have been perpetrated against Members in the Congress.

Mr. KAGEN. Well, then the question has to be asked, what's really going on here? What is it that our Republican colleagues disagree with us about with regard to protecting not only America, using FISA, but also protecting our constitutional rights? Can we not protect America and our Constitution at the same time?

Mr. YARMUTH. Well, obviously we can. And obviously this body did last fall. We passed a very, very reasonable reauthorization of the Protect America Act which did virtually everything that the President wanted, and it provided authority to surveil under reasonable circumstances. It didn't grant the NSC or any other institution the ability to go on a fishing expedition. It retains some oversight, some court control. Again, this is a secret court. But this is the way the law was set up in 1978. It's worked very well since then. There are some tweaks that are needed in this law. We recognize that. We did what the administration requested. All of a sudden, this issue of immunity comes up. And, again, I can't believe that this has anything to do with worrying about whether AT&T pays out millions of dollars. This is not what they are concerned about. I don't think the gentleman believes that either.

Mr. KAGEN. I appreciate what you just said, but it raises another question.

When you indicate that there is a question of immunity, is that not another word for "amnesty"? Is it correct to say that the current President, President Bush, is seeking amnesty? And if we are going to give amnesty to someone, isn't it a natural thing to ask what are we forgiving somebody for? Don't you think we should understand exactly what someone did before we forgive them and give them amnesty? Isn't that a reasonable thing to ask?

Mr. YARMUTH. I think it's not only reasonable; I think it's our duty to require that because it would be a frivolous act if we just said, well, whatever you did, whether it was legal or not, then we're going to grant you immunity or amnesty for doing that. No, we have to know, in order to grant immunity, whether or not there is a reason to grant immunity. Why would we want to do that if there were no reason to do it?

Mr. KAGEN. Isn't that also one of the reasons why we were sent here to Washington to try to fix this situation where the 109th Congress failed to ask questions, failed to ask the pertinent questions, failed to hold hearings to find out what it is we are fighting for, why we really invaded Iraq, where's our money being spent? I've been told that 20 percent of the money we spent in Iraq is simply unaccounted for. And 20 percent of over a trillion dollars is a lot of billions of dollars. So I think the 110th Congress has a duty, a responsibility, and, yes, a constitutional responsibility to balance the balance of power, to reset the balance, and to also investigate wherever possible and ask questions.

So the questions I would pose to my Republican friends is, what is it you're afraid of? What is it that someone has done wrong? And whom is it we are trying to protect? Are we trying to protect America, or are we trying to protect special interests, either the tele-

phone industry or the people that ask them to break the law in the White House?

Do you think it's possible that what they are really concerned about is their own immunity in the White House? Is that a possibility?

Mr. YARMUTH. Well, I think that's exactly the case.

And I don't blame the telephone companies. I think they were in a very difficult spot. When your government asks you to do something and says that the security of this country is at stake, then I suspect that most corporations would comply with the government's request.

Now, these corporations, being the major corporations that they are, with lots of money, with lots of legal advice, lawyers everywhere, would understand that what they were being asked to do might run afoul of the law. And I would suspect that they did make a decision, being in a very difficult spot, I can see, that I either comply with the government, do what they ask me to do, understanding that the government is regulating me; so they would say, okay, I'm really between a rock and a hard place. I can do what the government asks, knowing it's a violation of the law, or I can refuse and knowing that they are regulating me, that my business might be affected some way or another.

But that's all a different dynamic from what we're dealing with. We are dealing with the question of does the Congress have the responsibility to hold anyone, corporation or individual, accountable if they violate the law? And that's what I think we're talking about today and talking about in this long debate.

Mr. KAGEN. But isn't it also true that not every telephone company bent over and yielded information that was constitutionally protected under the fourth amendment? Isn't it true that Quest in Colorado said, no, not without a court order? And isn't it true that what we are trying to obtain is judicial oversight of the executive branch? And isn't it also a fact that the telephone companies didn't just volunteer the information, that they were being paid to do so, and at one point when they weren't being paid, they stopped turning over the information and stopped the wiretaps?

So I don't think it's just out of a patriotic duty that the companies had. There was a monetary compensation that went along with it. So I think that we have a constitutional duty and the right as representatives of the people that we have the honor of serving to ask these questions and to bring out the reality and the truth of this situation.

Mr. YARMUTH. We have to do this. And I agree with my colleague that what we're talking about here is the oath we took. We took an oath to uphold the Constitution. And the Constitution says that we have to obey the laws of the land and we have to, within